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11 C.V. CENTER, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 BARBARA HUBBARD,

15 Plaintiff,

16 C.V. CENTER, INC., JAMBA JUICE)
17 COMPANY dba JAMBA JUICE #603;)
18 CASUAL DINING SERVICES, INC.)
19 dba PIZZERIA UNO; MERVYN'S)
20 LLC; STARBUCKS CORPORATION)
21 dba STARBUCKS COFFEE #6632; J.C.)
22 PENNEY COMPANY, INC. dba)
23 JCPENNEY #1274; SERLER, INC. dba)
24 SUBWAY #31595; MANA)
25 DEVELOPMENT GROUP, LLC dba)
26 PANERA BREAD, CAFÉ #4284)

27 Defendants,

Case No. 08-CV-471-JAH LSP

) Assigned to: The Honorable John A.
Houston

**ANSWER OF DEFENDANT C.V.
CENTER, INC. TO PLAINTIFF'S
COMPLAINT**

1 Defendant C.V. CENTER, INC. (“Defendant”) for itself and no other
2 defendant, hereby answers the complaint (“Complaint”) filed by Plaintiff Barbara
3 Hubbard (“Plaintiff”) as follows:

4 INTRODUCTION

5 1. Paragraph 1 of the Complaint consists of legal conclusions to
6 which Defendant is not required to respond. To the extent a response is required,
7 Defendant admits that the property in question is located at 555 Broadway in Chula
8 Vista, California. Defendant denies any remaining allegations.

9 2. In response to Paragraph 2 of the Complaint, Defendant admits
10 that Plaintiff seeks the relief identified with respect to the claims asserted in Paragraph
11 2. Defendant denies that Plaintiff is entitled to the relief enumerated in Paragraph 2,
12 or to any relief at all.

13 JURISDICTION

14 3. Paragraph 3 consists of legal conclusions to which Defendant is
15 not required to respond. To the extent a response is required, Defendant admits that
16 Plaintiff seeks to base jurisdiction in this Court on the statutes identified in Paragraph
17 3.

18 4. Paragraph 4 consists of legal conclusions to which Defendant is
19 not required to respond. To the extent a response is required, Defendant admits that
20 Plaintiff seeks to base jurisdiction in this Court on the statute identified in Paragraph
21 4, and that Plaintiff contends that her claims arise out of the same nucleus of operative
22 facts.

23 5. Paragraph 5 consists of legal conclusions to which Defendant is
24 not required to respond. To the extent a response is required, Defendant admits that
25 Plaintiff contends his claims are authorized by the statutes identified in Paragraph 5.
26
27
28

VENUE

6. Paragraph 6 consists of legal conclusions to which Defendant is not required to respond. To the extent that a response is required, Defendant admits that Plaintiff purports to base proper venue on the statutes identified in Paragraph 6.

PARTIES

7. In response to Paragraph 7, Defendant admits that it is a Delaware corporation. The remainder of the allegations in Paragraph 7 are vague, ambiguous and unintelligible, and on that basis Defendant denies them.

8. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 8, and on that basis, denies them.

9. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 9, and on that basis, denies them.

10. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 10, and on that basis, denies them.

11. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 11, and on that basis, denies them.

12. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 12, and on that basis, denies them.

13. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 13, and on that basis, denies them.

14. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 14, and on that basis, denies them.

15. Paragraph 15 consists of legal conclusions to which no response is required. To the extent a response is required, Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 15, and on that basis, denies them.

FACTS

16. Defendant admits that the “Chula Vista Center Common Area Facility” is an area of the property commonly known as Chula Vista Mall which is open to the business invitees of Defendant, is intended for nonresidential use and its operation affects commerce. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations contained in Paragraph 16, and on that basis, denies them.

17. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 17, and on that basis, denies them.

18. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 18, and on that basis, denies them.

19. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 19, and on that basis, denies them.

20. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 20, and on that basis, denies them.

21. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 21, and on that basis, denies them.

22. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 22, and on that basis, denies them.

23. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 23, and on that basis, denies them.

24. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 24, and on that basis, denies them.

25. In response to Paragraph 25, Defendant denies the allegations contained therein.

26. In response to Paragraph 26, Defendant denies that its goods, services, facilities, privileges, advantages, and accommodations were unavailable to

1 physically disabled patrons. Defendant lacks sufficient knowledge or information to
2 form a belief as to the remaining allegations of Paragraph 26, and on that basis, denies
3 them.

4 27. Defendant lacks sufficient knowledge or information to form a
5 belief as to the allegations contained in Paragraph 27, and on that basis, denies them.

6 28. Defendant lacks sufficient knowledge or information to form a
7 belief as to the allegations contained in Paragraph 28, and on that basis, denies them.

8 29. Defendant lacks sufficient knowledge or information to form a
9 belief as to the allegations contained in Paragraph 29, and on that basis, denies them.

10 30. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 30, and on that basis, denies them.

12 31. Defendant lacks sufficient knowledge or information to form a
13 belief as to the allegations contained in Paragraph 31, and on that basis, denies them.

14 32. Defendant lacks sufficient knowledge or information to form a
15 belief as to the allegations contained in Paragraph 32, and on that basis, denies them.

16 33. Defendant lacks sufficient knowledge or information to form a
17 belief as to the allegations contained in Paragraph 33, and on that basis, denies them.

18 34. Defendant lacks sufficient knowledge or information to form a
19 belief as to the allegations contained in Paragraph 34, and on that basis, denies them.

20 35. Defendant lacks sufficient knowledge or information to form a
21 belief as to the allegations contained in Paragraph 35, and on that basis, denies them.

22 36. Defendant lacks sufficient knowledge or information to form a
23 belief as to the allegations contained in Paragraph 36, and on that basis, denies them.

24 37. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 37, and on that basis, denies them.

26 38. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 38, and on that basis, denies them.

1 39. Defendant lacks sufficient knowledge or information to form a
2 belief as to the allegations contained in Paragraph 39, and on that basis, denies them.

3 40. Defendant lacks sufficient knowledge or information to form a
4 belief as to the allegations contained in Paragraph 40, and on that basis, denies them.

5 41. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 41, and on that basis, denies them.

7 42. In response to Paragraph 42, Defendant denies the allegations
8 contained therein.

9 43. Defendant lacks sufficient knowledge or information to form a
10 belief as to the allegations of Paragraph 43 related to the generically described
11 “relevant times” and “current condition,” and on that basis, denies the allegations
12 contained in Paragraph 43.

13 44. In response to Paragraph 44, Defendant denies the allegations
14 contained therein.

15 45. Defendant lacks sufficient knowledge or information to form a
16 belief as to the allegations contained in Paragraph 45, and on that basis, denies them.

17 46. Defendant lacks sufficient knowledge or information to form a
18 belief as to the allegations contained in Paragraph 46, and on that basis, denies them.

19 47. Defendant lacks sufficient knowledge or information to form a
20 belief as to the allegations contained in Paragraph 47, and on that basis, denies them.

21 48. Defendant lacks sufficient knowledge or information to form a
22 belief as to the allegations contained in Paragraph 48, and on that basis, denies them.

23 49. Defendant lacks sufficient knowledge or information to form a
24 belief as to the allegations contained in Paragraph 49, and on that basis, denies them.

25 50. Defendant lacks sufficient knowledge or information to form a
26 belief as to the allegations contained in Paragraph 50, and on that basis, denies them.

27 51. Defendant lacks sufficient knowledge or information to form a
28

1 belief as to the allegations contained in Paragraph 51, and on that basis, denies them.

2 52. Defendant lacks sufficient knowledge or information to form a
3 belief as to the allegations contained in Paragraph 52, and on that basis, denies them.

4 53. Defendant lacks sufficient knowledge or information to form a
5 belief as to the allegations contained in Paragraph 53, and on that basis, denies them.

6 54. Defendant lacks sufficient knowledge or information to form a
7 belief as to the allegations contained in Paragraph 54, and on that basis, denies them.

8 55. Defendant lacks sufficient knowledge or information to form a
9 belief as to the allegations contained in Paragraph 55, and on that basis, denies them.

10 56. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 56, and on that basis, denies them.

12 57. Defendant lacks sufficient knowledge or information to form a
13 belief as to the allegations contained in Paragraph 57, and on that basis, denies them.

14 58. Defendant lacks sufficient knowledge or information to form a
15 belief as to the allegations contained in Paragraph 58, and on that basis, denies them.

16 59. Defendant lacks sufficient knowledge or information to form a
17 belief as to the allegations contained in Paragraph 59, and on that basis, denies them.

18 60. Defendant lacks sufficient knowledge or information to form a
19 belief as to the allegations contained in Paragraph 60, and on that basis, denies them.

20 61. Defendant lacks sufficient knowledge or information to form a
21 belief as to the allegations contained in Paragraph 61, and on that basis, denies them.

22 62. Defendant lacks sufficient knowledge or information to form a
23 belief as to the allegations contained in Paragraph 62, and on that basis, denies them.

24 63. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 63, and on that basis, denies them.

26 64. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 64, and on that basis, denies them.

65. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 65, and on that basis, denies them.

FIRST CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Chula Vista Center Common Area Facility)

66. In response to Paragraph 66, Defendant incorporates by reference its responses to Paragraphs 1-65.

67. Paragraph 67 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite what the Americans with Disabilities Act (“ADA”) holds as a “general rule.”

68. In response to Paragraph 68, Defendant denies the allegations contained therein.

Failure to Remove Architectural Barriers in an Existing Facility

69. Paragraph 69 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that Plaintiff purports to recite the definition of “readily achievable.”

70. Paragraph 70 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the “readily achievable” standard.

71. Paragraph 71 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant lacks sufficient knowledge or information as to the allegations of Paragraph 71 as they relate to the generically described “architectural barriers,” and on that basis, denies them.

72. Paragraph 72 consists of a legal conclusion to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 72.

Failure to Design and Construct an Accessible Facility

73. Paragraph 73 consists of a legal conclusion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that some construction was done to the area described as the “Chula Vista Center Common Area Facility” after January 29, 1992.

74. Paragraph 74 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA.

75. Paragraph 75 consists of legal conclusions to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations in Paragraph 75.

Failure to Make an Altered Facility Accessible

76. Paragraph 76 consists of a legal conclusion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that some construction was done to the area described as the “Chula Vista Center Common Area Facility” after January 29, 1992.

77. Paragraph 77 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite requirements contained in Title III of the ADA.

78. Paragraph 78 consists of a legal conclusion to which Defendant is not required to respond. To the extent a response is required, Defendant denies the allegations of Paragraph 78.

Failure to Modify Existing Policies and Procedures

79. Paragraph 79 consists of a legal assertion to which Defendant is

1 not required to respond. To the extent a response is required, Defendant admits that
 2 Plaintiff purports to recite prohibitions of Title III of the ADA.

3 80. Paragraph 80 consists of a legal conclusion to which Defendant is
 4 not required to respond. To the extent a response is required, Defendant denies the
 5 allegations of Paragraph 80.

6 81. In response to Paragraph 81, Defendant denies all allegations
 7 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
 8 any relief at all.

9 82. In response to Paragraph 82, Defendant denies all allegations
 10 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
 11 any relief at all.

12 **SECOND CLAIM**

13 **Disabled Persons Act**

14 **(The Chula Vista Center Common Area Facility)**

15 83. In response to Paragraph 83, Defendant incorporates by reference
 16 its responses to Paragraphs 1-82.

17 84. Paragraph 84 consists of a legal assertion to which Defendant is
 18 not required to respond. To the extent a response is required, Defendant admits that
 19 Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

20 85. Paragraph 85 consists of a legal assertion to which Defendant is
 21 not required to respond. To the extent a response is required, Defendant admits that
 22 Plaintiff purports to recite the requirements of Section 54.1 of the California Civil
 23 Code.

24 86. Paragraph 86 consists of a legal assertion to which Defendant is
 25 not required to respond. To the extent a response is required, Defendant admits that
 26 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
 27 Civil Code.

1 87. Paragraph 87 consists of a legal conclusion to which Defendant is
2 not required to respond. To the extent a response is required, Defendant denies the
3 allegations contained in Paragraph 87.

4 88. In response to Paragraph 88, Defendant denies all allegations
5 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
6 any relief at all.

7 89. In response to Paragraph 89, Defendant denies all allegations
8 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
9 any relief at all.

10 **THIRD CLAIM**

11 **Unruh Civil Rights Act**

12 **(The Chula Vista Center Common Area Facility)**

13 90. Defendant incorporates by reference its responses to Paragraphs 1-
14 89.

15 91. Paragraph 91 consists of a legal assertion to which Defendant is
16 not required to respond. To the extent a response is required, Defendant admits that
17 Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

18 92. Paragraph 92 consists of a legal assertion to which Defendant is
19 not required to respond. To the extent a response is required, Defendant admits that
20 Plaintiff purports to recite the requirements of Section 51.5 of the California Civil
21 Code.

22 93. Paragraph 93 consists of a legal assertion to which Defendant is
23 not required to respond. To the extent a response is required, Defendant admits that
24 Plaintiff purports to recite Section 51(f) of the California Civil Code.

25 94. Paragraph 94 consists of a legal conclusion to which Defendant is
26 not required to respond. To the extent a response is required, Defendant denies the
27 allegations contained in Paragraph 94.

1 95. Paragraph 95 consists of a legal conclusion to which Defendant is
2 not required to respond. To the extent a response is required, Defendant denies the
3 allegations contained in Paragraph 95.

4 96. In response to Paragraph 96, Defendant denies all allegations
5 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
6 any relief at all.

7 97. In response to Paragraph 97, Defendant denies all allegations
8 contained therein, and further denies that Plaintiff is entitled to the claimed relief, or to
9 any relief at all.

10 **FOURTH CLAIM**

11 **Denial of Full and Equal Access to Public Facilities**

12 **(The Chula Vista Center Common Area Facility)**

13 98. Defendant incorporates by reference its responses to Paragraphs 1-
14 98.

15 99. Paragraph 99 consists of a legal assertion to which Defendant is
16 not required to respond. To the extent a response is required, Defendant admits that
17 Plaintiff purports to recite a portion of California's Health & Safety Code.

18 100. Paragraph 100 consists of a legal assertion to which Defendant is
19 not required to respond. To the extent a response is required, Defendant admits that
20 Plaintiff purports to recite a portion of California's Health & Safety Code.

21 101. Paragraph 101 consists of a legal conclusion to which Defendant is
22 not required to respond. To the extent a response is required, Defendant admits that
23 the area described as the "Chula Vista Center Common Area Facility" was
24 constructed, altered or repaired after July 1, 1970, that the area is open to the general
25 public, and that business is conducted in the area. Except as previously admitted
26 herein, Defendant denies the remaining allegations of Paragraph 101.

27 102. Paragraph 102 consists of a legal conclusion to which Defendant is
28

1 not required to respond. To the extent a response is required, Defendant denies the
 2 allegations of Paragraph 102, and further denies that Plaintiff is entitled to the relief
 3 requested therein, or to any relief at all.

4 **FIFTH CLAIM**

5 **(Americans with Disabilities Act of 1990)**

6 **Denial of Full and Equal Enjoyment and Use**

7 **(The Jamba Juice Facility)**

8 103. In response to Paragraph 103, Defendant incorporates by reference
 9 its responses to Paragraphs 1-102.

10 104. Paragraph 104 consists of a legal assertion to which Defendant is
 11 not required to respond. To the extent a response is required, Defendant admits that
 12 Plaintiff purports to recite what the Americans with Disabilities Act (“ADA”) holds as
 13 a “general rule.”

14 105. Defendant lacks sufficient knowledge or information to form a
 15 belief as to the allegations contained in Paragraph 105, and on that basis, denies them.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 106. Paragraph 106 consists of a legal assertion to which Defendant is
 18 not required to respond. To the extent a response is required, Defendant admits that
 19 Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that
 20 Plaintiff purports to recite the definition of “readily achievable.”

21 107. Paragraph 107 consists of a legal assertion to which Defendant is
 22 not required to respond. To the extent a response is required, Defendant admits that
 23 Plaintiff purports to recite the “readily achievable” standard.

24 108. Defendant lacks sufficient knowledge or information to form a
 25 belief as to the allegations contained in Paragraph 108, and on that basis, denies them.

26 109. Defendant lacks sufficient knowledge or information to form a
 27 belief as to the allegations contained in Paragraph 109, and on that basis, denies them.

Failure to Design and Construct an Accessible Facility

110. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 110, and on that basis, denies them.

111. Paragraph 111 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA.

112. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 112, and on that basis, denies them.

Failure to Make an Altered Facility Accessible

113. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 113, and on that basis, denies them.

114. Paragraph 114 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite requirements contained in Title III of the ADA.

115. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 115, and on that basis, denies them.

Failure to Modify Existing Policies and Procedures

116. Paragraph 116 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions of Title III of the ADA.

117. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 117, and on that basis, denies them.

118. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 118, and on that basis, denies them.

119. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 119, and on that basis, denies them.

SIXTH CLAIM

Disabled Persons Act

(The Jamba Juice Facility)

120. In response to Paragraph 120, Defendant incorporates by reference its responses to Paragraphs 1-119.

121. Paragraph 121 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

122. Paragraph 122 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54.1 of the California Civil Code.

123. Paragraph 123 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California Civil Code.

124. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 124, and on that basis, denies them.

125. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 125, and on that basis, denies them.

126. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 126, and on that basis, denies them.

SEVENTH CLAIM

Unruh Civil Rights Act

(The Jamba Juice Facility)

127. Defendant incorporates by reference its responses to Paragraphs 1-126.

128. Paragraph 128 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

129. Paragraph 129 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51.5 of the California Civil Code.

130. Paragraph 130 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite Section 51(f) of the California Civil Code.

131. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 131, and on that basis, denies them.

132. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 132, and on that basis, denies them.

133. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 133, and on that basis, denies them.

134. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 134, and on that basis, denies them.

EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Jamba Juice Facility)

135. Defendant incorporates by reference its responses to Paragraphs 1-134.

136. Paragraph 136 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

137. Paragraph 137 consists of a legal assertion to which Defendant is

not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

138. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 138, and on that basis, denies them.

139. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 139, and on that basis, denies them.

NINTH CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Pizzeria Uno Facility)

140. In response to Paragraph 140, Defendant incorporates by reference its responses to Paragraphs 1-139.

141. Paragraph 141 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite what the Americans with Disabilities Act ("ADA") holds as a "general rule."

142. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 142, and on that basis, denies them.

Failure to Remove Architectural Barriers in an Existing Facility

143. Paragraph 143 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that Plaintiff purports to recite the definition of "readily achievable."

144. Paragraph 144 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the "readily achievable" standard.

145. Defendant lacks sufficient knowledge or information to form a

1 belief as to the allegations contained in Paragraph 145, and on that basis, denies them.

2 146. Defendant lacks sufficient knowledge or information to form a
3 belief as to the allegations contained in Paragraph 146, and on that basis, denies them.

4 Failure to Design and Construct an Accessible Facility

5 147. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 147, and on that basis, denies them.

7 148. Paragraph 148 consists of a legal assertion to which Defendant is
8 not required to respond. To the extent a response is required, Defendant admits that
9 Plaintiff purports to recite prohibitions contained in Title III of the ADA.

10 149. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 149, and on that basis, denies them.

12 Failure to Make an Altered Facility Accessible

13 150. Defendant lacks sufficient knowledge or information to form a
14 belief as to the allegations contained in Paragraph 150, and on that basis, denies them.

15 151. Paragraph 151 consists of a legal assertion to which Defendant is
16 not required to respond. To the extent a response is required, Defendant admits that
17 Plaintiff purports to recite requirements contained in Title III of the ADA.

18 152. Defendant lacks sufficient knowledge or information to form a
19 belief as to the allegations contained in Paragraph 152, and on that basis, denies them.

20 Failure to Modify Existing Policies and Procedures

21 153. Paragraph 153 consists of a legal assertion to which Defendant is
22 not required to respond. To the extent a response is required, Defendant admits that
23 Plaintiff purports to recite prohibitions of Title III of the ADA.

24 154. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 154, and on that basis, denies them.

26 155. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 155, and on that basis, denies them.

156. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 156, and on that basis, denies them.

TENTH CLAIM

Disabled Persons Act

(The Pizzeria Uno Facility)

157. In response to Paragraph 157, Defendant incorporates by reference its responses to Paragraphs 1-156.

158. Paragraph 158 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

159. Paragraph 159 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54.1 of the California Civil Code.

160. Paragraph 160 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California Civil Code.

161. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 161, and on that basis, denies them.

162. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 162, and on that basis, denies them.

163. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 163, and on that basis, denies them.

ELEVENTH CLAIM

Unruh Civil Rights Act

(The Jamba Juice Area Facility)

164. Defendant incorporates by reference its responses to Paragraphs 1-163.

165. Paragraph 165 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

166. Paragraph 166 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51.5 of the California Civil Code.

167. Paragraph 167 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite Section 51(f) of the California Civil Code.

168. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 168, and on that basis, denies them.

169. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 169, and on that basis, denies them.

170. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 170, and on that basis, denies them.

171. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 171, and on that basis, denies them.

TWELFTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Pizzeria Uno Facility)

172. Defendant incorporates by reference its responses to Paragraphs 1-

171.

173. Paragraph 173 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

174. Paragraph 174 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

175. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 175, and on that basis, denies them.

176. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 176, and on that basis, denies them.

THIRTEENTH CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Mervyn's Facility)

177. In response to Paragraph 177, Defendant incorporates by reference its responses to Paragraphs 1-176.

178. Paragraph 178 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite what the Americans with Disabilities Act ("ADA") holds as a "general rule."

179. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 179, and on that basis, denies them.

Failure to Remove Architectural Barriers in an Existing Facility

180. Paragraph 180 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that

1 Plaintiff purports to recite the definition of “readily achievable.”

2 181. Paragraph 181 consists of a legal assertion to which Defendant is
3 not required to respond. To the extent a response is required, Defendant admits that
4 Plaintiff purports to recite the “readily achievable” standard.

5 182. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 182, and on that basis, denies them.

7 183. Defendant lacks sufficient knowledge or information to form a
8 belief as to the allegations contained in Paragraph 183, and on that basis, denies them.

9 Failure to Design and Construct an Accessible Facility

10 184. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 184, and on that basis, denies them.

12 185. Paragraph 185 consists of a legal assertion to which Defendant is
13 not required to respond. To the extent a response is required, Defendant admits that
14 Plaintiff purports to recite prohibitions contained in Title III of the ADA.

15 186. Defendant lacks sufficient knowledge or information to form a
16 belief as to the allegations contained in Paragraph 186, and on that basis, denies them.

17 Failure to Make an Altered Facility Accessible

18 187. Defendant lacks sufficient knowledge or information to form a
19 belief as to the allegations contained in Paragraph 187, and on that basis, denies them.

20 188. Paragraph 188 consists of a legal assertion to which Defendant is
21 not required to respond. To the extent a response is required, Defendant admits that
22 Plaintiff purports to recite requirements contained in Title III of the ADA.

23 189. Defendant lacks sufficient knowledge or information to form a
24 belief as to the allegations contained in Paragraph 189, and on that basis, denies them.

25 Failure to Modify Existing Policies and Procedures

26 190. Paragraph 190 consists of a legal assertion to which Defendant is
27 not required to respond. To the extent a response is required, Defendant admits that
28

1 Plaintiff purports to recite prohibitions of Title III of the ADA.

2 191. Defendant lacks sufficient knowledge or information to form a
3 belief as to the allegations contained in Paragraph 191, and on that basis, denies them.

4 192. Defendant lacks sufficient knowledge or information to form a
5 belief as to the allegations contained in Paragraph 192, and on that basis, denies them.

6 193. Defendant lacks sufficient knowledge or information to form a
7 belief as to the allegations contained in Paragraph 193, and on that basis, denies them.

8 **FOURTEENTH CLAIM**

9 **Disabled Persons Act**

10 **(The Mervyn's Facility)**

11 194. In response to Paragraph 194, Defendant incorporates by reference
12 its responses to Paragraphs 1-193.

13 195. Paragraph 195 consists of a legal assertion to which Defendant is
14 not required to respond. To the extent a response is required, Defendant admits that
15 Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

16 196. Paragraph 196 consists of a legal assertion to which Defendant is
17 not required to respond. To the extent a response is required, Defendant admits that
18 Plaintiff purports to recite the requirements of Section 54.1 of the California Civil
19 Code.

20 197. Paragraph 197 consists of a legal assertion to which Defendant is
21 not required to respond. To the extent a response is required, Defendant admits that
22 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
23 Civil Code.

24 198. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 198, and on that basis, denies them.

26 199. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 199, and on that basis, denies them.

200. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 200, and on that basis, denies them.

FIFTEENTH CLAIM

Unruh Civil Rights Act

(The Mervyn's Facility)

201. Defendant incorporates by reference its responses to Paragraphs 1-200.

202. Paragraph 202 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

203. Paragraph 203 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 51.5 of the California Civil Code.

204. Paragraph 204 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite Section 51(f) of the California Civil Code.

205. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 205, and on that basis, denies them.

206. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 206, and on that basis, denies them.

207. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 207, and on that basis, denies them.

208. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 208, and on that basis, denies them.

SIXTEENTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Mervyn's Facility)

209. Defendant incorporates by reference its responses to Paragraphs 1-208.

210. Paragraph 210 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

211. Paragraph 211 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

212. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 212, and on that basis, denies them.

213. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 213, and on that basis, denies them.

SEVENTEENTH CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Starbucks Facility)

214. In response to Paragraph 214, Defendant incorporates by reference its responses to Paragraphs 1-213.

215. Paragraph 215 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite what the Americans with Disabilities Act ("ADA") holds as a "general rule."

216. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 216, and on that basis, denies them.

Failure to Remove Architectural Barriers in an Existing Facility

217. Paragraph 217 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that Plaintiff purports to recite the definition of “readily achievable.”

218. Paragraph 218 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the “readily achievable” standard.

219. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 219, and on that basis, denies them.

220. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 220, and on that basis, denies them.

Failure to Design and Construct an Accessible Facility

221. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 221, and on that basis, denies them.

222. Paragraph 222 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA.

223. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 223, and on that basis, denies them.

Failure to Make an Altered Facility Accessible

224. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 224, and on that basis, denies them.

225. Paragraph 225 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite requirements contained in Title III of the ADA.

226. Defendant lacks sufficient knowledge or information to form a

1 belief as to the allegations contained in Paragraph 226, and on that basis, denies them.

2 Failure to Modify Existing Policies and Procedures

3 227. Paragraph 227 consists of a legal assertion to which Defendant is
4 not required to respond. To the extent a response is required, Defendant admits that
5 Plaintiff purports to recite prohibitions of Title III of the ADA.

6 228. Defendant lacks sufficient knowledge or information to form a
7 belief as to the allegations contained in Paragraph 228, and on that basis, denies them.

8 229. Defendant lacks sufficient knowledge or information to form a
9 belief as to the allegations contained in Paragraph 229, and on that basis, denies them.

10 230. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 230, and on that basis, denies them.

12 **EIGHTEENTH CLAIM**

13 **Disabled Persons Act**

14 **(The Starbucks Facility)**

15 231. In response to Paragraph 231, Defendant incorporates by reference
16 its responses to Paragraphs 1-230.

17 232. Paragraph 232 consists of a legal assertion to which Defendant is
18 not required to respond. To the extent a response is required, Defendant admits that
19 Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

20 233. Paragraph 233 consists of a legal assertion to which Defendant is
21 not required to respond. To the extent a response is required, Defendant admits that
22 Plaintiff purports to recite the requirements of Section 54.1 of the California Civil
23 Code.

24 234. Paragraph 234 consists of a legal assertion to which Defendant is
25 not required to respond. To the extent a response is required, Defendant admits that
26 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
27 Civil Code.

1 235. Defendant lacks sufficient knowledge or information to form a
2 belief as to the allegations contained in Paragraph 235, and on that basis, denies them.

3 236. Defendant lacks sufficient knowledge or information to form a
4 belief as to the allegations contained in Paragraph 236, and on that basis, denies them.

5 237. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 237, and on that basis, denies them.

7 **NINETEENTH CLAIM**

8 **Unruh Civil Rights Act**

9 **(The Starbucks Facility)**

10 238. Defendant incorporates by reference its responses to Paragraphs 1-
11 237.

12 239. Paragraph 239 consists of a legal assertion to which Defendant is
13 not required to respond. To the extent a response is required, Defendant admits that
14 Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

15 240. Paragraph 240 consists of a legal assertion to which Defendant is
16 not required to respond. To the extent a response is required, Defendant admits that
17 Plaintiff purports to recite the requirements of Section 51.5 of the California Civil
18 Code.

19 241. Paragraph 241 consists of a legal assertion to which Defendant is
20 not required to respond. To the extent a response is required, Defendant admits that
21 Plaintiff purports to recite Section 51(f) of the California Civil Code.

22 242. Defendant lacks sufficient knowledge or information to form a
23 belief as to the allegations contained in Paragraph 242, and on that basis, denies them.

24 243. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 243, and on that basis, denies them.

26 244. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 244, and on that basis, denies them.

245. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 245, and on that basis, denies them.

TWENTIETH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Starbucks Facility)

246. Defendant incorporates by reference its responses to Paragraphs 1-245.

247. Paragraph 247 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

248. Paragraph 248 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

249. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 249, and on that basis, denies them.

250. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 250, and on that basis, denies them.

TWENTY-FIRST CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The JCPenney Facility)

251. In response to Paragraph 251, Defendant incorporates by reference its responses to Paragraphs 1-250.

252. Paragraph 252 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite what the Americans with Disabilities Act ("ADA") holds as a "general rule."

253. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 253, and on that basis, denies them.

Failure to Remove Architectural Barriers in an Existing Facility

254. Paragraph 254 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that Plaintiff purports to recite the definition of “readily achievable.”

255. Paragraph 255 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the “readily achievable” standard.

256. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 256, and on that basis, denies them.

257. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 257, and on that basis, denies them.

Failure to Design and Construct an Accessible Facility

258. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 258, and on that basis, denies them.

259. Paragraph 259 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions contained in Title III of the ADA.

260. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 260, and on that basis, denies them.

Failure to Make an Altered Facility Accessible

261. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 261, and on that basis, denies them.

262. Paragraph 262 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that

1 Plaintiff purports to recite requirements contained in Title III of the ADA.

2 263. Defendant lacks sufficient knowledge or information to form a
3 belief as to the allegations contained in Paragraph 263, and on that basis, denies them.

4 Failure to Modify Existing Policies and Procedures

5 264. Paragraph 264 consists of a legal assertion to which Defendant is
6 not required to respond. To the extent a response is required, Defendant admits that
7 Plaintiff purports to recite prohibitions of Title III of the ADA.

8 265. Defendant lacks sufficient knowledge or information to form a
9 belief as to the allegations contained in Paragraph 265, and on that basis, denies them.

10 266. Defendant lacks sufficient knowledge or information to form a
11 belief as to the allegations contained in Paragraph 266, and on that basis, denies them.

12 267. Defendant lacks sufficient knowledge or information to form a
13 belief as to the allegations contained in Paragraph 267, and on that basis, denies them.

14 **TWENTY-SECOND CLAIM**

15 **Disabled Persons Act**

16 **(The JCPenney Facility)**

17 268. In response to Paragraph 268, Defendant incorporates by reference
18 its responses to Paragraphs 1-267.

19 269. Paragraph 269 consists of a legal assertion to which Defendant is
20 not required to respond. To the extent a response is required, Defendant admits that
21 Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

22 270. Paragraph 270 consists of a legal assertion to which Defendant is
23 not required to respond. To the extent a response is required, Defendant admits that
24 Plaintiff purports to recite the requirements of Section 54.1 of the California Civil
25 Code.

26 271. Paragraph 271 consists of a legal assertion to which Defendant is
27 not required to respond. To the extent a response is required, Defendant admits that
28

1 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
2 Civil Code.

3 272. Defendant lacks sufficient knowledge or information to form a
4 belief as to the allegations contained in Paragraph 272, and on that basis, denies them.

5 273. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 273, and on that basis, denies them.

7 274. Defendant lacks sufficient knowledge or information to form a
8 belief as to the allegations contained in Paragraph 274, and on that basis, denies them.

9 **TWENTY-THIRD CLAIM**

10 **Unruh Civil Rights Act**

11 **(The JCPenney Facility)**

12 275. Defendant incorporates by reference its responses to Paragraphs 1-
13 274.

14 276. Paragraph 276 consists of a legal assertion to which Defendant is
15 not required to respond. To the extent a response is required, Defendant admits that
16 Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

17 277. Paragraph 277 consists of a legal assertion to which Defendant is
18 not required to respond. To the extent a response is required, Defendant admits that
19 Plaintiff purports to recite the requirements of Section 51.5 of the California Civil
20 Code.

21 278. Paragraph 278 consists of a legal assertion to which Defendant is
22 not required to respond. To the extent a response is required, Defendant admits that
23 Plaintiff purports to recite Section 51(f) of the California Civil Code.

24 279. Defendant lacks sufficient knowledge or information to form a
25 belief as to the allegations contained in Paragraph 279, and on that basis, denies them.

26 280. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 280, and on that basis, denies them.

281. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 281, and on that basis, denies them.

282. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 282, and on that basis, denies them.

TWENTY-FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The JCPenney Facility)

283. Defendant incorporates by reference its responses to Paragraphs 1-282.

284. Paragraph 284 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

285. Paragraph 285 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

286. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 286, and on that basis, denies them.

287. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 287, and on that basis, denies them.

TWENTY-FIFTH CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Subway Facility)

288. In response to Paragraph 288, Defendant incorporates by reference its responses to Paragraphs 1-287.

289. Paragraph 289 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that

1 Plaintiff purports to recite what the Americans with Disabilities Act (“ADA”) holds as
2 a “general rule.”

3 290. Defendant lacks sufficient knowledge or information to form a
4 belief as to the allegations contained in Paragraph 290, and on that basis, denies them.

5 Failure to Remove Architectural Barriers in an Existing Facility

6 291. Paragraph 291 consists of a legal assertion to which Defendant is
7 not required to respond. To the extent a response is required, Defendant admits that
8 Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that
9 Plaintiff purports to recite the definition of “readily achievable.”

10 292. Paragraph 292 consists of a legal assertion to which Defendant is
11 not required to respond. To the extent a response is required, Defendant admits that
12 Plaintiff purports to recite the “readily achievable” standard.

13 293. Defendant lacks sufficient knowledge or information to form a
14 belief as to the allegations contained in Paragraph 293, and on that basis, denies them.

15 294. Defendant lacks sufficient knowledge or information to form a
16 belief as to the allegations contained in Paragraph 294, and on that basis, denies them.

17 Failure to Design and Construct an Accessible Facility

18 295. Defendant lacks sufficient knowledge or information to form a
19 belief as to the allegations contained in Paragraph 295, and on that basis, denies them.

20 296. Paragraph 296 consists of a legal assertion to which Defendant is
21 not required to respond. To the extent a response is required, Defendant admits that
22 Plaintiff purports to recite prohibitions contained in Title III of the ADA.

23 297. Defendant lacks sufficient knowledge or information to form a
24 belief as to the allegations contained in Paragraph 297, and on that basis, denies them.

25 Failure to Make an Altered Facility Accessible

26 298. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 298, and on that basis, denies them.

299. Paragraph 299 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite requirements contained in Title III of the ADA.

300. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 300, and on that basis, denies them.

Failure to Modify Existing Policies and Procedures

301. Paragraph 301 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions of Title III of the ADA.

302. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 302, and on that basis, denies them.

303. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 303, and on that basis, denies them.

304. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 304, and on that basis, denies them.

TWENTY-SIXTH CLAIM

Disabled Persons Act

(The Subway Facility)

305. In response to Paragraph 305, Defendant incorporates by reference its responses to Paragraphs 1-304.

306. Paragraph 306 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

307. Paragraph 307 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54.1 of the California Civil Code.

1 308. Paragraph 308 consists of a legal assertion to which Defendant is
2 not required to respond. To the extent a response is required, Defendant admits that
3 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
4 Civil Code.

5 309. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 309, and on that basis, denies them.

7 310. Defendant lacks sufficient knowledge or information to form a
8 belief as to the allegations contained in Paragraph 310, and on that basis, denies them.

9 311. Defendant lacks sufficient knowledge or information to form a
10 belief as to the allegations contained in Paragraph 311, and on that basis, denies them.

11 **TWENTY-SEVENTH CLAIM**

12 **Unruh Civil Rights Act**

13 **(The Subway Facility)**

14 312. Defendant incorporates by reference its responses to Paragraphs 1-
15 311.

16 313. Paragraph 313 consists of a legal assertion to which Defendant is
17 not required to respond. To the extent a response is required, Defendant admits that
18 Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

19 314. Paragraph 314 consists of a legal assertion to which Defendant is
20 not required to respond. To the extent a response is required, Defendant admits that
21 Plaintiff purports to recite the requirements of Section 51.5 of the California Civil
22 Code.

23 315. Paragraph 315 consists of a legal assertion to which Defendant is
24 not required to respond. To the extent a response is required, Defendant admits that
25 Plaintiff purports to recite Section 51(f) of the California Civil Code.

26 316. Defendant lacks sufficient knowledge or information to form a
27 belief as to the allegations contained in Paragraph 316, and on that basis, denies them.

317. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 317, and on that basis, denies them.

318. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 318, and on that basis, denies them.

319. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 319, and on that basis, denies them.

TWENTY-EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Subway Facility)

320. Defendant incorporates by reference its responses to Paragraphs 1-319.

321. Paragraph 321 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

322. Paragraph 322 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite a portion of California's Health & Safety Code.

323. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 323, and on that basis, denies them.

324. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 324, and on that basis, denies them.

TWENTY-NINTH CLAIM

(Americans with Disabilities Act of 1990)

Denial of Full and Equal Enjoyment and Use

(The Panera Bread Facility)

325. In response to Paragraph 325, Defendant incorporates by reference its responses to Paragraphs 1-324.

1 326. Paragraph 326 consists of a legal assertion to which Defendant is
2 not required to respond. To the extent a response is required, Defendant admits that
3 Plaintiff purports to recite what the Americans with Disabilities Act (“ADA”) holds as
4 a “general rule.”

5 327. Defendant lacks sufficient knowledge or information to form a
6 belief as to the allegations contained in Paragraph 327, and on that basis, denies them.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 328. Paragraph 328 consists of a legal assertion to which Defendant is
9 not required to respond. To the extent a response is required, Defendant admits that
10 Plaintiff purports to recite prohibitions contained in Title III of the ADA, and that
11 Plaintiff purports to recite the definition of “readily achievable.”

12 329. Paragraph 329 consists of a legal assertion to which Defendant is
13 not required to respond. To the extent a response is required, Defendant admits that
14 Plaintiff purports to recite the “readily achievable” standard.

15 330. Defendant lacks sufficient knowledge or information to form a
16 belief as to the allegations contained in Paragraph 330, and on that basis, denies them.

17 331. Defendant lacks sufficient knowledge or information to form a
18 belief as to the allegations contained in Paragraph 331, and on that basis, denies them.

19 Failure to Design and Construct an Accessible Facility

20 332. Defendant lacks sufficient knowledge or information to form a
21 belief as to the allegations contained in Paragraph 332, and on that basis, denies them.

22 333. Paragraph 333 consists of a legal assertion to which Defendant is
23 not required to respond. To the extent a response is required, Defendant admits that
24 Plaintiff purports to recite prohibitions contained in Title III of the ADA.

25 334. Defendant lacks sufficient knowledge or information to form a
26 belief as to the allegations contained in Paragraph 334, and on that basis, denies them.

Failure to Make an Altered Facility Accessible

335. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 335, and on that basis, denies them.

336. Paragraph 336 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite requirements contained in Title III of the ADA.

337. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 337, and on that basis, denies them.

Failure to Modify Existing Policies and Procedures

338. Paragraph 338 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite prohibitions of Title III of the ADA.

339. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 339, and on that basis, denies them.

340. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 340, and on that basis, denies them.

341. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 341, and on that basis, denies them.

THIRTIETH CLAIM

Disabled Persons Act

(The Panera Bread Facility)

342. In response to Paragraph 342, Defendant incorporates by reference its responses to Paragraphs 1-341.

343. Paragraph 343 consists of a legal assertion to which Defendant is not required to respond. To the extent a response is required, Defendant admits that Plaintiff purports to recite the requirements of Section 54 of the California Civil Code.

344. Paragraph 344 consists of a legal assertion to which Defendant is

1 not required to respond. To the extent a response is required, Defendant admits that
 2 Plaintiff purports to recite the requirements of Section 54.1 of the California Civil
 3 Code.

4 345. Paragraph 345 consists of a legal assertion to which Defendant is
 5 not required to respond. To the extent a response is required, Defendant admits that
 6 Plaintiff purports to recite the requirements of Sections 54 and 54.1 of the California
 7 Civil Code.

8 346. Defendant lacks sufficient knowledge or information to form a
 9 belief as to the allegations contained in Paragraph 346, and on that basis, denies them.

10 347. Defendant lacks sufficient knowledge or information to form a
 11 belief as to the allegations contained in Paragraph 347, and on that basis, denies them.

12 348. Defendant lacks sufficient knowledge or information to form a
 13 belief as to the allegations contained in Paragraph 348, and on that basis, denies them.

14 **THIRTY-FIRST CLAIM**

15 **Unruh Civil Rights Act**

16 **(The Panera Bread Facility)**

17 349. Defendant incorporates by reference its responses to Paragraphs 1-
 18 348.

19 350. Paragraph 350 consists of a legal assertion to which Defendant is
 20 not required to respond. To the extent a response is required, Defendant admits that
 21 Plaintiff purports to recite the requirements of Section 51 of the California Civil Code.

22 351. Paragraph 351 consists of a legal assertion to which Defendant is
 23 not required to respond. To the extent a response is required, Defendant admits that
 24 Plaintiff purports to recite the requirements of Section 51.5 of the California Civil
 25 Code.

26 352. Paragraph 352 consists of a legal assertion to which Defendant is
 27 not required to respond. To the extent a response is required, Defendant admits that
 28

1 Plaintiff purports to recite Section 51(f) of the California Civil Code.

2 353. Defendant lacks sufficient knowledge or information to form a
3 belief as to the allegations contained in Paragraph 353, and on that basis, denies them.

4 354. Defendant lacks sufficient knowledge or information to form a
5 belief as to the allegations contained in Paragraph 354, and on that basis, denies them.

6 355. Defendant lacks sufficient knowledge or information to form a
7 belief as to the allegations contained in Paragraph 355, and on that basis, denies them.

8 356. Defendant lacks sufficient knowledge or information to form a
9 belief as to the allegations contained in Paragraph 356, and on that basis, denies them.

10 **THIRTY-SECOND CLAIM**

11 **Denial of Full and Equal Access to Public Facilities**

12 **(The Panera Bread Facility)**

13 357. Defendant incorporates by reference its responses to Paragraphs 1-
14 356.

15 358. Paragraph 358 consists of a legal assertion to which Defendant is
16 not required to respond. To the extent a response is required, Defendant admits that
17 Plaintiff purports to recite a portion of California's Health & Safety Code.

18 359. Paragraph 359 consists of a legal assertion to which Defendant is
19 not required to respond. To the extent a response is required, Defendant admits that
20 Plaintiff purports to recite a portion of California's Health & Safety Code.

21 360. Defendant lacks sufficient knowledge or information to form a
22 belief as to the allegations contained in Paragraph 360, and on that basis, denies them.

23 361. Defendant lacks sufficient knowledge or information to form a
24 belief as to the allegations contained in Paragraph 361, and on that basis, denies them.

PRAYER FOR RELIEF BY PLAINTIFF

(Against Chula Vista Center, Inc.)

Defendant denies the averments in Plaintiff's prayer for relief, and denies that Plaintiff or anyone else is entitled to such relief, or to any relief at all.

AFFIRMATIVE DEFENSES

Defendant C.V. Center, Inc. asserts the following separate affirmative defenses, without conceding that it bears the burden of proof or persuasion as to any of them.

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred because said claims are preempted by federal and/or state law, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*

THIRD AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred because Defendant has at all times relied in good faith, and acted in conformity with, the implementing standards and guidelines of Title III of the Americans with Disabilities Act and applicable state law and regulations, pronouncements from federal and state agencies, and state and local approvals. Accordingly, granting some or all of the relief sought by Plaintiff would violate due process under state and/or federal constitutions and public policy.

FOURTH AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred because the relief Plaintiff requests (a) is not required by law, (b) is

1 unreasonable, (c) is not readily achievable, (d) is structurally infeasible, (e) would
2 impose an undue burden and cause hardship, and/or (f) may jeopardize the health and
3 safety of customers.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 The Complaint, and each purported claim for relief alleged therein, is
6 barred because the relief Plaintiff requests would, if granted, fundamentally alter the
7 area described as the "Chula Vista Center Common Area Facility" and/or the nature of
8 the goods or services provided by Defendant.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 Each purported claim for relief alleged in the Complaint is moot because
11 Defendant is and/or has been in compliance with the laws, statutes, and regulations
12 identified in Plaintiff's Complaint.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 The Complaint, and each purported claim for relief alleged therein, is
15 barred because Plaintiff's claims are predicated on unconstitutionally vague and/or
16 overly broad interpretations of regulations, laws or, alternatively, the applicable laws
17 or regulations themselves are unconstitutionally vague and/or overly broad.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 No act or omission by Defendant was the cause of Plaintiff's damages, if
20 any. In the alternative, Plaintiff's damages, if any, were caused by the conduct of
21 persons or entities other than Defendant; and Plaintiff's recovery, if any, must be
22 reduced in proportion to the amount of fault attributable to such conduct.

23 **NINTH AFFIRMATIVE DEFENSE**

24 All of Plaintiff's damages, if any, were contributed to or caused by
25 Plaintiff's lack of reasonable care, improper conduct, or negligence. Therefore,
26 Plaintiff's recovery, if any, must be reduced in proportion to the amount of fault
27 attributable to her actions.

TENTH AFFIRMATIVE DEFENSE

Although Defendant denies that Plaintiff has suffered any damages, if it is determined that Plaintiff has been damaged, then pursuant to Sections 1431.2 *et seq.* of the California Civil Code, Defendant is not liable for any non-economic damages that are not directly proportional to Defendant's percentage of fault, if any.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred by the doctrines of laches, consent, waiver, estoppel, and/or unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred because Plaintiff failed to mitigate damages.

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint, and each purported claim for relief alleged therein, is barred by the doctrines of justification and/or excuse.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which injunctive relief may be granted.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert the Complaint, and each and every purported claim for relief alleged therein, as to any alleged disability access violation not actually encountered by her, because Plaintiff cannot show injury in fact as to such alleged violations.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert a separate cause of action against Defendant under Health & Safety Code § 19955(a).

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein,

1 is barred because Defendant fully performed all contractual, statutory, and other duties
2 owed to Plaintiff under applicable law.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 Plaintiff's Complaint, and each purported claim for relief alleged therein,
5 is barred because, to the extent Plaintiff alleges Defendant has obligations under state
6 or federal law to remove barriers as the area identified as the "Chula Vista Center
7 Common Area Facility," the alleged obligations exceed the scope of the legislated
8 authority.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's Complaint, and each purported claim for relief alleged therein,
11 is barred because local building authorities issued appropriate permits and Certificates
12 of Occupancy for the area identified as the "Chula Vista Center Common Area
13 Facility," and Defendant had a right to rely on the issuance of permits as establishing
14 compliance with all applicable laws, regulations, orders and approvals.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 Plaintiff's Complaint, and each purported claim for relief alleged therein,
17 is barred because, to the extent that alterations have not been made to the area
18 identified as the "Chula Vista Center Common Area Facility" that Plaintiff contends
19 should have been made, such changes were not required under applicable law and any
20 requirement to make such changes would impose an undue burden.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff's Complaint, and each purported claim for relief alleged therein,
23 is barred because the changes Plaintiff has demanded to the area identified as the
24 "Chula Vista Center Common Area Facility" are not readily achievable, are
25 technically infeasible, are not required, would impose an undue hardship on
26 Defendant, would fundamentally alter the way Defendant does its business, and would
27 create a risk to the health and safety of Plaintiff and others.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 Plaintiff's Complaint, and each purported claim for relief alleged therein,
3 is barred because Defendant acted reasonably, honestly, in good faith, and in a non-
4 discriminatory manner at all material times based on all relevant facts and
5 circumstances known to it at the time it so acted.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 Plaintiff's Complaint, and each purported claim for relief alleged therein,
8 is barred because Plaintiff has had the same access to the area identified as the "Chula
9 Vista Center Common Area Facility" as non-disabled persons.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 Plaintiff's Complaint, and each purported claim for relief alleged therein,
12 is barred because Plaintiff is not a member of the class of individuals protected by the
13 Americans with Disabilities Act or California's disability access statutes.

14 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

15 Plaintiff's Complaint, and each purported claim for relief alleged therein,
16 is barred because the goods and services provided at the area identified as the "Chula
17 Vista Center Common Area Facility" to the public, including Plaintiff, are accessible
18 to and usable by persons with disabilities as required under state and federal law,
19 including without limitation, the Americans with Disabilities Act (42 U.S.C. §§ 12101
20 *et seq.*), the Unruh Act (Cal. Civ. Code. §§ 51 *et seq.*), the Blind and Other Physically
21 Disabled Persons Act (Cal. Civ. Code §§ 54 *et seq.*), California Health & Safety Code
22 Part 5.5, and all other disability access statutes, rules, and regulations.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 Defendant does not presently know all the facts and circumstances
25 respecting Plaintiff's claims. Defendant therefore reserves the right to amend its
26 Answer should it later discover facts demonstrating the existence of additional
27 affirmative defenses.

PRAYER FOR RELIEF BY C.V. CENTER, INC.

WHEREFORE, Defendant hereby prays for the following relief:

1. That Plaintiff take nothing by reason of the Complaint and that Judgment by rendered in favor of the Defendant;
2. That Defendant be awarded its attorneys' fees and the costs of suit incurred by it in this action;
3. For such other and further relief as the Court deems just and proper.

Dated: May 15, 2008

SIDLEY AUSTIN LLP

By: /s/ Aimee G. Mackay
E-mail: amackay@sidley.com
Attorney for Defendant
C.V. CENTER, INC.